

William F. "Chip" Merlin, Jr.
CA Bar No. 275936
cmerlin@merlinlawgroup.com
MERLIN LAW GROUP
777 S. Harbour Island Blvd.,
Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
Facsimile: (813) 229-3692

Victor J. Jacobellis
CA Bar No. 278988
vjacobellis@merlinlawgroup.com

Daniel J. Veroff
CA Bar No. 291492
dveroff@merlinlawgroup.com

MERLIN LAW GROUP
1160 Battery St East, Suite 100
San Francisco, CA 94111
Telephone: (415) 851-2300
Facsimile: (415) 960-3882

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STEVEN BAKER AND MELANIA KANG
D/B/A CHLOE'S CAFE, a California general
partnership, individually and on behalf of
themselves and all others similarly situated,

Plaintiff,

VS.

**OREGON MUTUAL INSURANCE
COMPANY, an Oregon Corporation.**

Defendant.

Case No. 3:20-cv-05467-LB

**PLAINTIFFS' RESPONSE TO
MOTION OF AMICUS CURIAE
UNITED POLICYHOLDERS TO
SUBMIT MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS AND, IN THE
ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

Date: December 17, 2020
Time: 9:30 a.m.
Location: Magistrate Judge
Laura Beeler, Via Webinar

1 Plaintiffs, Steven Baker and Melania Kang d/b/a Chloe's Cafe ("Plaintiffs" or "Chloe's
2 Cafe") submit this response to the motion of *amicus curiae* United Policyholders to submit
3 memorandum of points and authorities in opposition to Defendant's motion to dismiss and, in
4 the alternative, motion for summary judgment (the "Motion").

5 **I. ARGUMENT**

6 Plaintiffs respectfully ask the Court to exercise its broad discretion to grant the motion
7 and consider the arguments and additional authorities raised by United Policyholders. *See*
8 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) ("The district court has broad discretion to
9 appoint amici curiae. We may reverse an order appointing amici only if the district judge has
10 abused his discretion."), *disapproved on other grounds*, *Montijo v. Swaney*, 754 Fed. App'x 522
11 (9th Cir. 2018).

12 The memorandum attached to United Policyholder's Motion raises important points
13 relevant to the interests of the policyholders United Policyholders represents, and it provides the
14 unique perspective of a public interest organization dedicated to the rights of consumers who
15 purchase insurance. In deciding Oregon Mutual's motion to dismiss this class action lawsuit—a
16 suit implicating the rights of Oregon Mutual's insureds nationwide—this Court should receive
17 the benefit of all of the arguments and authorities that support policyholders' claims. Were the
18 Court to deny the Motion and grant the motion to dismiss, United Policyholders would likely be
19 granted leave to file an amicus brief before the Ninth Circuit and would make the same arguments
20 there. Instead of requiring United Policyholders to undertake this unnecessary extra step, the
21 Court should instead consider here the California authorities and arguments presented by United
22 Policyholders, as Courts in this district have repeatedly done in similar situations. *See, e.g.*, *Am.*
23 *Civil Liberties Union of N. Ca. v. Burwell*, No. 16-cv-03539-LB, 2017 WL 4551492, at *7 (N.D.
24 Cal. Oct. 11, 2017) (Beeler, Mag. J.) (granting motion by several states to submit an *amicus* brief
25 in support of opposition to plaintiff's request to amend complaint); *Music Group Macao*
26 *Commercial Offshore Ltd. v. Does*, 82 F. Supp. 3d 979 (N.D. Cal. March 2, 2015) (Beeler, Mag.
27 J.) (granting motion by Public Citizen, Inc. to file *amicus* brief opposing enforcement of the
28

1 plaintiff's subpoenas, "thank[ing] Public Citizen for its excellent and informative brief[,]” and
2 "weigh[ing] Public Citizen's concerns in ruling on the subpoenas").

3 **II. CONCLUSION**

4 For the reasons set forth herein, Plaintiffs respectfully suggest that the Court grant the
5 motion and consider the points and authorities raised by United Policyholders.

6
7 Dated: December 9, 2020

Respectfully submitted,

8 By: /s/ Victor J. Jacobellis
9

10 Victor J. Jacobellis
CA Bar No. 278988
vjacbellis@merlinlawgroup.com
11 Daniel J. Veroff
CA Bar No. 291492
dveroff@merlinlawgroup.com
12 **MERLIN LAW GROUP**
13 1160 Battery St East, Suite 100
San Francisco, CA 94111
Telephone: (415) 851-2300
Facsimile: (415) 960-3882

14 William F. "Chip" Merlin, Jr.
CA Bar No. 275936
cmerlin@merlinlawgroup.com
15 **MERLIN LAW GROUP**
16 777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
Facsimile: (813) 229-3692

17 Adam M. Moskowitz (*pro hac vice*)
Florida Bar No. 984280
adam@moskowitz-law.com
18 Adam A. Schwartzbaum (*pro hac vice*)
Florida Bar No. 93014
adams@moskowitz-law.com
Howard M. Bushman
(*Pro Hac Vice* Admission Pending)
Florida Bar No. 0364230
howard@moskowitz-law.com
20 **THE MOSKOWITZ LAW FIRM, PLLC**
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423
Attorneys for Plaintiff